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By PwC Deutschland | 08. März 2026

ECJ: VAT rate for services ancillary to short-term accommodation

In a most recent judgment, the European Court of Justice held, that the German legislation which excludes the reduced VAT rate applicable to short-term accommodation services provided in hotels and similar establishments which are not directly used for that accommodation is not in breach of EU law. Those rules must, however, be applied to concrete and specific aspects of the categories of accommodation services referred to in point (12) of Annex III of the VAT Directive and ensure that the principle of fiscal neutrality is preserved.

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Legal background

The main point of the referral is the interpretation of **Art. 98 (1) and (2) of the VAT Directive** in connection with Annex III No. 12 of that Directive. Article 98 states that (1) Member States may apply either one or two reduced rates, and (2) the reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.'

Annex III to the VAT Directive, which contains the list of supplies of goods and services to which the reduced rates of VAT, includes, in point (12): "accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites".

Section 12 (2) No.11 of the German VAT Act provides that the VAT rate is reduced to 7 percent for the leasing of living space and bedrooms that a taxable person keeps ready for short-term accommodation of guests, as well as the short-term leasing of camping sites. This shall not apply to services that do not directly relate to leasing even when, by virtue of the payment for the leasing, these services are also compensated.

The joint cases referred

The three cases which the Supreme Tax Court referred for a preliminary ruling concern the compatibility of Section 12 (2) No. 11 VAT Act with the EU VAT Directive. Specifically: Must breakfast or other ancillary services offered by hotels and similar establishments that provide short-term accommodation be taxed separately from the supply of accommodation, or could it, as an ancillary service, be taxed at the same reduced rate as the principal supply? The Supreme Tax Court had stated, among other things, that - in its opinion - the national provision in Section 12 (2) No. 11 VAT Act was in accordance with EU law and that selective application of the reduced tax rate remained permissible – if there was no threat of distortion of competition.

In her **Opinion**, the Advocate General concluded, among other things, that the VAT Directive does not preclude national legislation such as Section 12 (2) No.11 VAT Act.

Decision

The **German VAT regulation** at issue which excludes from the scope of the reduced rate of value added tax applicable to short-term accommodation services provided in hotels and similar establishments supplies which are not directly used for that accommodation **is in principle not precluded under Article 98 (1) and (2) of the Vat Directive**even though those services could be regarded as being ancillary to that accommodation due to the fact that the remuneration for them is covered by the flat-rate overall price paid for all the services supplied in the context of that accommodation.

However, the possibility of the Member States to apply selectively the reduced rate of VAT is subject to a twofold condition, the ECJ said. **First,** the relevant rules are applied to

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concrete and specific aspects of the categories of accommodation services referred to in point (12) of Annex III and,**secondly**, that they comply with the principle of fiscal neutrality. Those conditions seek to ensure that Member States make use of that possibility only under conditions which ensure their correct and straightforward application and the prevention of any possible evasion, avoidance or abuse.

As regards the situation where a Member State chooses to apply the reduced rate of VAT selectively to certain concrete and specific aspects of the supplies listed in Annex III, the ECJ notes that the principle of fiscal neutrality precludes treating similar goods or supplies of services, which are thus in competition with each other, differently for VAT purposes.

To determine whether goods or services are similar, consideration must primarily be given to the point of view of a typical consumer. Goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one or the other of those goods or services. Such examination - as regards breakfast and/or access to parking spaces, gyms, wellness facilities and wi-fi networks - is a matter for the referring court.

As far as the ECJ is concerned, but again subject to the verification of the referring court, regarding the selective application of the reduced VAT rate of 7% to the ancillary services in question, the ECJ finds that national legislation which makes it possible to separate from short-term accommodation supplies that are not directly used for that accommodation, such as the supplies at issue in the main proceedings, and to apply to them the standard VAT rate of 19%, even where they constitute supplies that are ancillary to that accommodation, does not appear to be incompatible with the principle of fiscal neutrality.

Source:

ECJ **judgment of 25 February 2026** C-409/24 - J-GmbH, joined cases C-410/24 and C-411/24.

Schlagwörter

hotel accomodation, reduced rate VAT